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June 4, 2008

(Via email and U.S. Mail)

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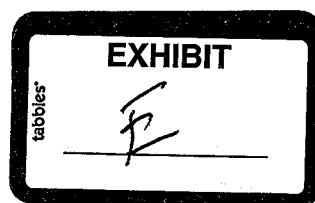
Dear Counselors:

The recent round of 30(b)(6) depositions of Plaintiffs' representatives revealed several items of concern, which Defendants expect Plaintiffs to promptly address.

1. Databases Not Previously Produced. During the deposition of Mr. Huber, it came to light that ODEQ maintains databases of septic systems and environmental complaints. These items were within the scope of Defendants' discovery that has been pending for well over a year. We recognize that the state did produce hard copies of some information from the complaints database, but the database itself has not been produced. The fact that there is a septic database that has never been produced or made available to us raises very serious concerns. Not only was this within the scope of our discovery, but Plaintiffs have known since early on in this case that one of Defendants' theories in this case is that septic systems in the IRW are a potential source of the Alleged Pollutants.

Similarly, Mr. Parrot revealed during his deposition that ODEQ maintains a database of sewage bypasses that have occurred within the publicly owned wastewater collection and treatment systems in Oklahoma. You have never produced this database or any information there from despite the responsiveness and relevance of raw sewage discharges in the IRW.

Mr. Parrott provided documents at the deposition that appeared to be print outs of a biosolids database maintained by ODEQ and he testified that the printouts came from a "biosolids database." Whether this is part of the same database he described which is related to sewage bypasses or whether it is a separate database, in either case, this database has not been provided to Defendants.



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The above-described information that has been withheld from Defendants has hampered the preparation of our defense, has delayed access to information that our experts need to prepare their evaluations, and rendered our ability to conduct these 30(b)(6) depositions incomplete. We require that Plaintiffs immediately produce these four databases for our inspection and copying. Furthermore, we reserve the right to re-depose these two witnesses on topics relevant to the information contained within these databases upon the completion of our review.

2. Inadequate Representative Preparation on Oklahoma POTWs and Biosolids. Wastewater Topic No 8 of the Deposition Notice required Mr. Parrott to give testimony on:

The annual quantity of each of the Alleged Pollutants released or discharged into waters of the IRW by the POTWs or point sources identified in response to Topic 2 [Oklahoma POTWs and point sources], and any recommendations given or limitations imposed by the state on the amount of Alleged Pollutants that each POTW or point source may discharge or release into the waters of the IRW.

This Topic includes not only the volume and constituents from the "end-of-pipe" discharges of these facilities, but all bypasses, overflows and or SSOs known to the state. Mr. Parrott was not prepared to address this Topic in two respects. First, the Topic was not limited in time. This Topic draws a direct parallel to Plaintiffs' request of Defendants to provide annual poultry production in the IRW for as far back in time as their records will allow. As you are aware, Judge Joyner's Order entered on May 20, 2008 addressing Plaintiffs' Motion to Expand Discovery Period [Dkt. 1710] expresses the Court's view that relevant and probative information held by one party is not barred from discovery simply because it is older than five years. The amount and nature of the pollutants that have been discharged by these POTWs and point sources into the waters of the IRW is highly probative, particularly in light of the opinions by Plaintiffs' experts that the chemical constituents of the sediments in the streams and Lake Tenkiller are reflective of historical pollutant loads.

Mr. Parrott provided limited information that reached back only to 2005 for the POTWs (2000 for bypasses), hence he was not prepared to answer questions for the five-year period, and certainly he was unprepared to provide responsive information extending back through the full history of the state's records. We expect Plaintiffs to adhere to the very precedent they sought against Defendants by providing this relevant information for the full term of operation for each of these sources.

The second failure in Mr. Parrott's preparation is that the information he provided relative to the discharges/releases from these facilities only addressed a few,

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rather than all of the constituents contained in these discharges/releases. It is clear from the few records we have seen and the literature values for constituents that Mr. Parrott testified to that Plaintiffs are fully capable of identifying and summarizing most, if not every constituent of these discharges and releases.

Thirdly, Mr. Parrott's lack of preparation suffered from the same deficiencies with regard to the following Biosolids Topics:

Topic 1: The locations of all applications of biosolids in the IRW which have occurred either with the knowledge of the State or pursuant to Permits issued or sludge management plans prepared by the State or persons working at the direction of or under the authority of the State, and the date an amount of each such application, the constituent composition of each such application, and total acreage covered by each application.

Topic 3: The annual quantity of biosolids or sewage sludges generated by POTWs operating in the Oklahoma portion of the IRW, the disposition or use of all such materials, and any recommendations given or limitations imposed by the State on the use or disposition of such materials in the IRW.

It was apparent that Mr. Parrott's preparation on these Topics was minimal. He was unprepared to provide information on these Topics extending back in time to the commencement of operation for these Oklahoma facilities, and he provided no information regarding the constituents contained within the biosolids/sludges that have been land applied in the IRW. Repeatedly upon questioning of why he could only provide information on permitted biosolids application sites in the IRW for a limited period of time (depending on the applicator, back to 1991, 2000, or 2004 respectively), Mr. Parrott testified that the information was "in the archives." Mr. Parrott did not know what specific information could be found in the archives nor where these archives are located. He had not attempted to locate the information to allow a complete response by the State as to where and in what quantities biosolids were applied in the Oklahoma portion of the IRW. Mr. Parrott was also only able to locate a single violation of a sludge management plan by a biosolids applicator, along with approximately five citizen complaints related to biosolids applications. Upon inquiry it was discovered this was because he had searched only the aforementioned database for such violations, which he believed had records back to the early 2000's. The State did not make any effort to search other files, hard copy or otherwise, to locate such violations or complaints, which was clearly the subject of Biosolids Topic No. 7, without any temporal limitation. Thus, Plaintiffs failed to produce a witness who was fully prepared to testify with regard to the express subject matter set forth in the Notice and in keeping with the Court's view on temporal limitations.

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The information which was withheld from Defendants as a result of the inadequate preparation of Plaintiffs' designee is hampering Defendants' preparation of their case, and is denying Defendants' experts the information they need to prepare their evaluations. Accordingly, we require that Plaintiffs immediately present a witness for deposition who is fully prepared to testify on the full scope of the Topics contained in the Notice.

Lastly, Mr. Parrott was completely unprepared to testify in response to Biosolids Topic Nos. 2 and 4 with regard to biosolids/sludge issues in the Arkansas portion of the IRW. Accordingly, Plaintiffs have eliminated their ability to offer evidence on these issues at trial.

3. Environmental Complaints Documentation at Local Field Offices. Mr. Huber testified that the local ODEQ field offices that investigate environmental complaints maintain the records associated with those complaints. He also indicated that the entire contents of those files are not normally transmitted to the central files in Oklahoma City. Defendants were not advised either (1) that ODEQ had gathered the documents from the local offices and produced them at the document review in Oklahoma City; nor (2) that the documents at the local field offices were ready for Defendants' inspection. This indicates to us that we do not have all of the environmental complaint documents relevant to the IRW that are within the custody and control of the state. We require that this deficiency be corrected immediately, as these documents are essential for the preparation of Defendants' expert case. We additionally reserve the right to re-depose a representative on any new information contained within those not previously produced documents.

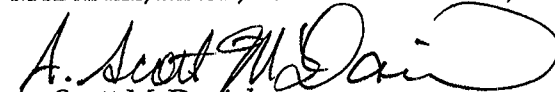
4. General Failure of Designees to Prepare to Speak for All Aspects of Oklahoma Government. It was apparent in the depositions of the three designees to date that each of the witnesses failed to adequately prepare to testify by researching and obtaining information and documents from each branch of Oklahoma government that has had some level of involvement with the IRW issues. These ODEQ employee-designees clearly focused their preparation on information solely within ODEQ's custody. Where inquiries were made of other agencies, they were cursory and not broad enough to cover the full range of the Notice Topics. On multiple occasions, I showed the witness documents from other agencies such as the Oklahoma Scenic Rivers Commission, Oklahoma Conservation Commission and the Office of the Secretary of Environment only to find that the witness had never seen the document and could not testify about its contents. We are awaiting the receipt of the transcripts to fully evaluate the implications of this lack of preparation, and we reserve the right to re-depose additional properly prepared designees. Nonetheless we note that this lack of preparation and inability to testify has correspondingly limited Plaintiffs' ability to present contrary evidence at trial.

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This correspondence sets forth matters that require your immediate attention. I must hear from you promptly about Plaintiffs' intentions with regard to resolving these problems with specific commitments as to the dates these issues will be corrected. If Plaintiffs are not willing to correct these deficiencies immediately, then I propose we have a teleconference on Monday afternoon, June 9 at 2:00 p.m. to determine whether we will need to involve the Court

Best regards,

MCDANIEL, HIXON, LONGWELL & ACORD, PLLC


A. Scott McDaniel

ASM:jlw

cc: Defense counsel (*via email only*)